

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
MUHAMMED ZBEIDA TILLISY,
Defendant.

Case Nos. CR13-310-RSL
CR09-269-RSL

ORDER GRANTING
MOTION FOR EXTENSION
OF TIME

This matter comes before the Court on defendant's "Motion for Extension of Time" (Dkt. # 278). Because this case was consolidated with cause no. CR09-269-RSL on appeal, see United States v. Tillisy, No. 22-30151 (9th Cir. Sept. 7, 2022), Dkt. # 2, this matter also comes before the Court on defendant's "Motion for Extension of Time" (Dkt. # 285) in that case. Having reviewed the motion and the balance of the record, the Court GRANTS both motions.

On August 11, 2022, this Court entered an order denying defendant’s motion for reconsideration. Dkt. A # 271.¹ Under the Federal Rules of Appellate Procedure, defendant had 14 days after the order was entered to file a timely notice of appeal. See Fed. R. App. P. 4(b)(1)(A)(i). Thus, to comply with the Rule, defendant needed to file his notice of appeal by August 25, 2022. See Fed. R. App. P. 26(a)(1) (counting days). Defendant missed this deadline, filing his notice of appeal on August 31, 2022. Dkt. A # 272.

¹ “Dkt. A” refers to the district court’s docket sheet in CR13-0310-RSL and “Dkt. B” to the district court’s docket sheet in CR09-269-RSL.

1 Defendant similarly missed the deadline for filing a notice of appeal in CR09-269-RSL.
 2 There, the order denying reconsideration was entered on July 29, 2022. Dkt. B #275. Thus,
 3 defendant's notice of appeal was due by August 12, 2022. However, defendant did not file his
 4 notice until August 22, 2022. Dkt. B # 277.

5 Although not jurisdictional, the 14-day deadline established by Rule 4(b) is a mandatory
 6 claim-processing rule that, if invoked by the government, requires dismissal of an appeal. United
 7 States v. Sadler, 480 F.3d 932, 938-42 (9th Cir. 2007). The United States is unwilling to waive
 8 this deadline. See Tillisy, No. 22-30151, Dkt. # 3. Accordingly, unless this deadline can be
 9 extended defendant's appeals must be dismissed. As the Court of Appeals lacks the authority to
 10 extend the time for filing a notice of appeal, Fed. R. App. P. 26(b)(2); see also United States v.
 11 Arevalo, 408 F.3d 1233, 1238-39 (9th Cir. 2005), the cases were remanded from the Ninth
 12 Circuit back to this Court for the limited purpose of allowing defendant to “request an extension
 13 of the time period for appeal.” Tillisy, No. 22-30151, Dkt. # 5 (citing United States v. Ono, 72
 14 F.3d 101, 103 (9th Cir. 1995)).

15 The Court now turns to the question of whether an extension of time should be granted
 16 here. Upon a showing of “excusable neglect or good cause” this Court may extend the time for
 17 filing a notice of appeal “for a period not to exceed 30 days from the expiration of the time
 18 otherwise prescribed by this Rule 4(b).” Fed. R. App. P. 4(b)(4). “An analysis of ‘excusable
 19 neglect’ generally requires a court to analyze the four factors set out by the Supreme
 20 Court.” See United States v. Navarro, 800 F.3d 1104, 1109 (9th Cir. 2015) (citing Pioneer Inv.
 21 Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 395 (1993)). These factors include danger
 22 of prejudice, length of the delay and its potential impact on judicial proceedings, reason for the
 23 delay, and whether the movant acted in good faith. Pioneer, 507 U.S. at 395. Alternatively,
 24 “‘good cause’ is a non-rigorous standard that has been construed broadly across procedural and
 25 statutory contexts.” Navarro, 800 F.3d at 1109 (quoting Ahanchian v. Xenon Pictures, Inc., 624
 26 F.3d 1253, 1259 (9th Cir. 2010)).

27 Defendant raises several arguments as to why extension of time is proper here. First, he
 28 claims that due to his transfer from state custody to federal custody, he did not receive notice of
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1 the court's rulings in a timely manner. Dkt. A # 278 at 1; Dkt. B # 285 at 1. This contention is
 2 supported by a letter defendant wrote on August 17, 2022, which notified the Court of
 3 defendant's change in custody and stated that he had not received any orders since arriving at
 4 FDC Seatac on July 29, 2022. See Dkt. A # 273; Dkt. B # 280 (filed on the docket on August
 5 31, 2022). Additionally, the record reflects that the August 11 order (Dkt. A # 271) was returned
 6 as undeliverable on August 12, 2022. See Docket Entry CR13-310-RSL (Aug. 12, 2022).
 7 According to the docket entry, the staff at defendant's former state facility, MCC-Monroe,
 8 informed the court that defendant was "released to community custody care of DOC-EVERETT
 9 FIELD OFFICE" and confirmed that defendant "will receive mail at this address, per desk
 10 officer." Id. However, defendant asserts that he was moved to FDC Seatac on July 29, 2022, and
 11 later moved to FCI Victorville. Dkt. A # 278 at 1; Dkt. B # 285 at 1.² Defendant contends that
 12 that he did not receive the order entered on July 29, 2022, until August 18, 2022. Dkt. B # 277.
 13 He contends he did not receive the order entered on August 11, 2022, until September 20, 2022.
 14 Dkt. A # 278 at 1.

15 Second, defendant claims that when he learned of the orders, he was in quarantine and
 16 had to wait for his counselor to approve postage to file the notice of appeal. Dkt. A # 278 at 2;
 17 Dkt. B # 285 at 2. Third, he claims that he experienced difficulties meeting the deadline because
 18 he is "legally blind and has a brain condition." Dkt. A # 278 at 2; Dkt. B # 285 at 2.

19 Finally, defendant notes that he was appointed counsel in one of the consolidated cases.
 20 See Dkt. A # 278 at 2; Dkt. A # 270 (CJA appointment). However, defendant claims that with
 21 regard to the represented case, he filed his notice of appeal five days after his appointed counsel
 22 in the case informed him of the order. Dkt. A # 278 at 2. He asserts that he was previously
 23 unaware of the order due to the communication difficulties associated with his transfer of
 24 custody discussed above. Id. He further claims that his appointed counsel was "not given leave

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 27 ² This claim is supported by the Court of Appeals docket, which notes that mail sent to defendant
 28 at FDC Seatac was returned to sender as defendant was "not at [FDC] SEATAC," and noted that the
 materials would be resent to defendant at FCI Victorville. Tillis, No. 22-30151, Dkt. # 7.

1 to not file" a notice of appeal in the case, and that he has subsequently requested replacement
 2 counsel. Id.

3 The Court finds that that defendant has demonstrated "excusable neglect" and "good
 4 cause." As to excusable neglect, the delay in filing the notices of appeal was fairly short – ten
 5 days and six days past the deadline respectively. Thus, the danger of prejudice and potential
 6 impact on judicial proceedings is reasonably low. Furthermore, defendant's primary reason for
 7 delay – that he was not informed of the final orders until (1) after the notice of appeal deadline
 8 had passed or (2) shortly before the deadline due to his transfer from state custody to federal
 9 custody – is compelling and appears to be supported by the record. Finally, there is no indication
 10 that defendant acted in bad faith. Indeed, it appears that defendant attempted to avoid this issue
 11 by reaching out to the Court when he realized he wasn't receiving orders, specifically because
 12 he knew the notice of appeal deadline was fast approaching. See Dkt. B # 276.

13 Additionally, with regard to the case where defendant is represented, it was not
 14 unreasonable for defendant to expect counsel to file the notice of appeal. See Roe v. Ortega-
Flores, 528 U.S. 470, 477 (2000) (explaining that "filing a notice of appeal is a purely
 15 ministerial task" and recognizing that failure to do so when a defendant has instructed counsel to
 16 initiate an appeal can render representation constitutionally ineffective). Here, even though
 17 defendant was represented, he managed to independently filed his notice of appeal shortly after
 18 learning of the relevant final order. See Dkt. A # 272.

20 Therefore, the Court finds that the communication challenges defendant faced during his
 21 transition from state to federal custody constitute excusable neglect and good cause justifying an
 22 extension of the time period for filing a notice of appeal. Because defendant's notices of appeal
 23 were both filed within the 30-day extension period contemplated in Rule 4(b)(4), his notices of
 24 appeal are timely. See United States v. Green, 89 F.3d 657, 659-60 (9th Cir. 1996); United
25 States v. Buzard, 884 F.2d 475, 475-76 (9th Cir. 1989).

26 Defendant's motions for extension of time (Dkt. # 278 in CR13-310-RSL and Dkt. # 285
 27 in CR09-269-RSL) are GRANTED.

1 DATED this 9th day of November, 2022.
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Robert S. Lasnik

Robert S. Lasnik
United States District Judge

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